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**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THE REGENTS OF THE UNIVERSITY OF  
 CALIFORNIA and JANET NAPOLITANO,  
*in her official capacity as President of the  
 University of California,*

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND  
 SECURITY and ELAINE DUKE, *in her  
 official capacity as Acting Secretary of the  
 Department of Homeland Security,*

Defendants.

Case No. 17-cv-05211-WHA

**PLAINTIFFS' EMERGENCY MOTION TO  
 SHORTEN TIME FOR BRIEFING ON  
 MOTION TO COMPLETE  
 ADMINISTRATIVE RECORD**

Judge: Honorable William Alsup

STATE OF CALIFORNIA, STATE OF  
MAINE, STATE OF MARYLAND, and  
STATE OF MINNESOTA,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY, ELAINE DUKE, in her official  
capacity as Acting Secretary of the Department  
of Homeland Security, and the UNITED  
STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05235-WHA

CITY OF SAN JOSE, a municipal corporation,

Plaintiff,

v.

DONALD J. TRUMP, President of the United  
States, in his official capacity, ELAINE C.  
DUKE, in her official capacity, and the  
UNITED STATES OF AMERICA,

Defendants.

CASE NO. 17-CV-05329-WHA

DULCE GARCIA, MIRIAM GONZALEZ  
AVILA, SAUL JIMENEZ SUAREZ,  
VIRIDIANA CHABOLLA MENDOZA,  
NORMA RAMIREZ, and JIRAYUT  
LATTHIVONGSKORN,

Plaintiffs,

v.

UNITED STATES OF AMERICA, DONALD  
J. TRUMP, in his official capacity as President  
of the United States, U.S. DEPARTMENT OF  
HOMELAND SECURITY, and ELAINE  
DUKE, in her official capacity as Acting  
Secretary of Homeland Security,

Defendants.

CASE NO. 17-CV-05380-WHA

1 Pursuant to Civil Local Rule 6-3, Plaintiffs move on an emergency basis to shorten the time for  
2 briefing on Plaintiffs' Motion to Complete the Administrative Record in Accordance with 5 U.S.C. §  
3 706 ("Motion"), filed concurrently herewith. As set forth in Plaintiffs' Motion, the government's  
4 production of the administrative record on October 6, 2017, was utterly inadequate, leaving out wide  
5 swaths of crucial documents, such as internal agency communications, emails, documents from within  
6 the Department of Justice, and communications from the White House. The government wasted weeks  
7 preparing a wholly deficient administrative record that contains only documents that were already  
8 public. The government further withheld documents based on assertions of privilege, without providing  
9 any privilege log. The Plaintiffs have therefore moved to compel the government to complete the  
10 administrative record. Plaintiffs' motion is not a discovery motion; because the administrative record is  
11 the keystone of the APA issues in this case, the motion goes to the foundational issue of what will be  
12 adjudicated. The normal motion cycle would result in a hearing date on November 13, 2017, at the  
13 earliest. Such timing would render adjudication of this case impossible because, under the Court's case  
14 management order, the Parties' motions for summary judgment, provisional relief, or to dismiss are due  
15 on November 1, 2017.

16 Indeed, this November 1 deadline is just three weeks from today. Given these exigent  
17 circumstances, Plaintiffs ask that their motion be heard with extraordinary dispatch, with a briefing  
18 schedule that will position the motion for hearing this week. Plaintiffs recognize the imposition on this  
19 Court's time and resources, but as the Court is well aware, the tight deadlines in this case result from  
20 Defendants' decision to end the Deferred Action for Childhood Arrivals ("DACA") program  
21 precipitously. *See* Tr. of Proceedings (Sept. 21, 2017) at 23:22-23, 24:2-5 (Dkt. #52) [hereinafter  
22 "09/21/17 Tr."] (the Court rejecting Defendants' proposal to have opening briefs due on December 1,  
23 2017 because "[b]y then the March 5 [date for ending DACA renewals] will have come and gone"; "I  
24 don't like the idea that we're fiddling while Rome burns and then suddenly the program is expired. I  
25 think we've got to have a decision well in advance of March 5 so that this can go to the Court of  
26 Appeals").

27 Defendants are now attempting to squeeze the time for judicial review of DACA's rescission on  
28 the front end as well. At the September 21, 2017 hearing, Defendants said that "discovery at this point

would be premature and unnecessary and really inappropriate” and “will likely be a fishing expedition” *Id.* at 22:3-5, 22:15-16. Defendants also pushed for a week-long extension to file the administrative record, which the Court correctly recognized was unnecessary. *Id.* at 17:-4-18. Defendants also proposed that Plaintiffs “offer precise suggestions about what they think should be in the administrative record by letter.” *Id.* at 35:21-23. Plaintiffs proceeded to comply with Defendants’ proposal in a letter dated October 1, 2017. In this letter, Plaintiffs advised Defendants that they were “required to produce an administrative record that includes every document and communication considered within any component of the Executive Branch as part of the process of determining whether to continue, modify, or rescind” the DACA Program, as well as an accompanying privilege log. Ex. 1 to Decl. of J. Davidson in Support of Plaintiffs’ Motion to Complete the Administrative Record in Accordance with 5 U.S.C. § 706, Letter from J. Davidson, Covington & Burling LLP, to B. Shumate & B. Rosenberg, U.S. Dep’t of Justice, at 1-2 (Oct. 1, 2017). As the Court correctly predicted, Defendants chose to simply “reject the[] suggestions,” 09/21/17 Tr. at 35:24, producing a patently inadequate administrative record and refusing to produce a privilege log.

Defendants’ obstruction requires motion practice to be conducted with extraordinary dispatch. An order to produce an adequate administrative record and privilege log entered this Friday, giving the government a week to comply, would leave only 10 days before the merits briefing in this case. That timetable already gives the government some benefit from their decision to shortcut the administrative record; any additional time would result in serious prejudice to the Court’s ability to receive full merits briefing with the benefit of an adequate administrative record.

Accordingly, Plaintiffs request that the Court set an expedited briefing schedule on the Motion as follows:

- Opposition due **Tuesday, October 10, 2017**; and
- Reply due **Wednesday, October 11, 2017**;
- Hearing this **Thursday, October 12, 2017**, or at the Court’s earliest convenience.

1 As set forth in the accompanying Declaration of Jeffrey Davidson, Plaintiffs certify that they  
2 unsuccessfully attempted to secure Defendants' agreement to the relief sought herein.<sup>1</sup>  
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19 <sup>1</sup> Defendants did not agree to the schedule requested in this motion and stated as follows: "Defendants  
20 do not anticipate being able to substantively respond within 24 hours of plaintiffs' filing of their motion,  
21 as plaintiffs propose. Among other things, defendants have a reply brief due to be filed in the DACA  
22 litigation pending in the Eastern District of New York on October 10, have to appear in-person for a  
23 status conference in the Eastern District of New York on October 11, and have seven sets of objections  
24 to discovery requests that are due on October 10 and/or 11 relating to the DACA litigation in that court.  
25 Moreover, because defendants have not yet even seen plaintiffs' proposed filing, they cannot commit to  
26 responding within a 24-hour period, and requiring defendants to do so would be severely prejudicial.  
27 Accordingly, defendants believe that this Court should hold its hearing on plaintiffs' forthcoming  
28 motion on October 19, and set the due date for defendants' opposition brief for October 16.  
Alternatively, at minimum, to the extent the Court holds its hearing on October 12, defendants should be  
permitted until 5 p.m. Pacific Daylight Time on October 11 to file their opposition brief." Ex. 2 to Decl.  
of J. Davidson, Email #1 from B. Rosenberg to J. Davidson (Oct. 9, 2017). Defendants later stated as  
follows: "Defendants also request the opportunity to appear telephonically at the hearing, should the  
court schedule a hearing." Ex. 3 to Decl. of J. Davidson, Email #2 from B. Rosenberg to J. Davidson  
(Oct. 9, 2017).

Dated: October 9, 2017  
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ATTESTATION

I, Jeffrey M. Davidson, hereby attest, pursuant to Civil L.R. 5-1, that I have received authorization to electronically sign and file this document from each of the persons identified in the signature block.

Dated: October 9, 2017

/s/ Jeffrey M. Davidson  
Jeffrey M. Davidson

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